



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/735,091

12/12/2003

Richard A. Davis

4476-00011

1601

7590

11/01/2006

John T. Pienkos
Whyte Hirschboeck Dudek S.C.
555 East Wells Street
Suite 1900
Milwaukee, WI 53202-3819

EXAMINER

GOODEN JR, BARRY J

ART UNIT

PAPER NUMBER

3616

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,091

Applicant(s)

DAVIS ET AL.

Examiner

Barry J. Gooden Jr.

Art Unit

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19 and 26-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 is/are allowed.
- 6) ☒ Claim(s) 26 and 30-49 is/are rejected.
- 7) ☒ Claim(s) 27-29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/10/06</u> | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3616

DETAILED ACTION

This office action is in response to the amendment filed 8/9/06. Currently claims 19 and 26-49 are pending. Claims 1-18 and 20-25 have been cancelled; claim 19 has been amended; and, claims 26-49 have been added.

Claim Objections

1. Claims 34, 38, 41, 43, and 49 are objected to because of the following informalities:

Claim 34, "exceed the diameter" should be replaced with -- exceed the tire diameter --.

Claim 38, line 5 of the claim, "right and left fenders" should be replaced with -- right and left rear fenders --.

Claim 41, "exceed the diameter" should be replaced with -- exceed the tire diameter --.

Claim 43, "apart from the real wheels" should be replaced with -- apart from the rear wheels --.

Claim 49, "exceed the diameter" should be replaced with -- exceed the tire diameter --.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 26-42 and 45-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

At line 5, of claim 26 and line 3, of claims 42 and 48, "substantially 10 psi or less" is unclear. The specification does not provide support for the specified range. In addition, "substantially 10 or less" could be construed as 12 psi, as such the claims is indefinite.

At line 2, of claims 27 and 45, "at least mostly" is unclear. Examiner suggests replacing with -- mostly --.

Art Unit: 3616

At line 3, of claims 29 and 47, "at least substantially" is unclear. Examiner suggests replacing with -- substantially --.

At lines 6-9, of claim 30, "wherein at least a first section of the first foot rest area of one of the foot rest surfaces extends along a first plane that is different from a second plane along which extends at least second section of the second foot rest area of the one foot rest surface" is unclear. There should be a first section of the second foot rest area defined if there is a second section. Examiner suggests a careful revision of the claim. Similar problems exist in claims 37 and 44.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 26, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Hisada, US Patent 5,893,424.

In regards to claims 26, 43, as best understood, Hisada discloses all of the claimed elements including:

a recreational utility vehicle (RUV) capable of accommodating multiple passengers, the RUV comprising:

Art Unit: 3616

right and left front wheels and right and left rear wheels, wherein the front wheels are spaced apart from the rear wheels by a wheelbase, and wherein each of the wheels is associated with a respective low-pressure tire;

right and left front fenders respectively extending behind respective rear edges of the right and left front tires, respectively, and right and left rear fenders respectively extending in front of respective front edges of the right and left rear tires, respectively;

a saddle seat having a first portion, a second portion and a transitional portion extending in a manner that is at least partially non-horizontal, the transitional portion being positioned between the first and second portions, the second portion being behind the first portion;

a longitudinally elongated frame to which the wheels, fenders and seat are coupled at least indirectly, the longitudinally elongated frame being sufficiently elongated to accommodate the saddle seat;

front and rear suspensions coupled to and spaced longitudinally along the frame, said front and rear suspensions being sufficiently sized and sprung to accommodate the wheelbase and the frame and the saddle seat;

a handlebar and a rack supported at least indirectly by the longitudinally elongated frame, wherein at least a part of the rack is positioned behind the saddle seat;

a pair of grip handles on laterally opposite sides of the saddle seat, wherein the grip handles are in addition to the handlebar and the rack, and wherein the grip handles are positioned forward of the part of the rack and aft of the first portion of the saddle seat; and

right and left foot rest surfaces that are respectively positioned between the right front and rear fenders and the left front and rear fenders, respectively, and that do not extend rearward of the front edges of the right and left rear tires, respectively;

wherein each of the right and left foot rest surfaces has a respective length that is substantially equal to or greater than a diameter of at least one of the tires (Reference is made to figures 1-5).

Art Unit: 3616

Examiner notes that high-volume, low-pressure tires are old and well known in the ATV arts. As such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a tire with 10psi or less pressure, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

7. Claims 30-42 and 44-49, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisada, US Patent 5,893,424 in view of Rondeau et al. US Publication 200/0102694 and further in view of Maki et al., US Patent 6,270,106 B1.

In regards to claims 30-36, Hisada discloses all of the claimed elements excluding a multi-planar footboard.

Rondeau et al. discloses a multi-planar foot board including all of the claimed elements pertaining to the footrest, seat, and grip handles, yet excluding the details pertaining to the transmission elements.

Maki et al. discloses an engine and an automatic transmission wherein the automatic transmission is a CVT in combination with a gear box.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ATV of Hisada et al. in view of the teachings of Rondeau et al. to include multiple passengers and further in view of Maki et al. to facilitate ATV operation with multiple passengers to so as to promote ATV usability, increase passenger accommodation and ease of operation.

Allowable Subject Matter

8. Claim 19 is allowed.

9. Claims 27-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 8/8/06 have been fully considered but they are not persuasive. Examiner maintains the previous rejection is proper. All arguments directed to the added claims are moot in view of the new grounds of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry J. Gooden Jr. whose telephone number is (571) 272-5135. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 10/30/04
Barry J. Gooden Jr.
Examiner
Art Unit 3616

BJG

 10/30/04
FAYE M. FLEMING
PRIMARY EXAMINER